IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.742 OF 1990

Shri Motilal Kishangopal Thavi .. Appellant
(Orig. Plff)

V/s

1. Harikishan Kishorilal Vyas
2. Balmukund Kishorilal Vyas
3. Kamalkishore Harikishan Vyas
4. Goverdhan Kishorilal Vyas
5. The Muniicpal Corporation
of Gr. Bombay ... Respondents
(Orig.Defts)

Shri M.R.Katikar for the Appellant

Ms. Sonia Miskid i/b N.B.Shah for the Respondents

CORAM:S.R.SATHE,J.

DATED:17th August 2007

ORAL JUDGMENT :-

1. The Appellant original plaintiff in L.C.Suit No.6076 of 1985 has preferred this appeal against the judgment and order passed by the Court of the Judge, City Civil Court, Bombay whereby plaintiff’s suit for permanent injunction was dismissed with costs.

2. For the sake of convenience hereafter parties shall be referred to as the plaintiff and defendants.

. Brief facts giving rise to this appeal are as under.

3. According to the plaintiff the suit room no.18 situated at Khanderaowadi was in his possession as a tenant since last so many years. He had in fact taken the said room on lease from the rent collector in 1973. According to him, at the request of defendant no.4 who is brother of original defendants nos. 1 and 2, he allowed them to stay in the suit room for a temporary period. Accordingly, defendant nos.1 to 3 started residing in the suit room. Plaintiff had obtained ration card on the address of the suit room. He used to pay rent of the said room to the rent collector since the year 1973. Not only that but he also spent amount of Rs.6,000/- for the repairs of the said room. However, the rent collector never issued any rent receipt in his favour. In the year 1985 the defendant nos.1 to 3 made an attempt to evict the plaintiff from the suit room. Plaintiff therefore filed complaint with police in the year 1973 or thereabout. The defendant no.5 Municipal Corporation issued notice to the defendant no.4 to remove the wall of the suit room hence defendant no.4 filed Suit No.6003/73 against B.M.C. In that suit defendant no.4 claimed tenancy rights in respect of the suit room. When plaintiff took out Notice of Motion for impleading him in the said suit the same was

rejected. Thus, finding that the defendant nos.1 to 4 are likely to evict the plaintiff illegally he filed the present suit for permanent injunction restraining the defendants from forcibly, high handedly , illegally dispossessing the plaintiff from the suit room.

4. The defendant nos.1 to 4 filed their written statement and opposed the suit claim. They contended that plaintiff was never a tenant of the suit room and the suit room was taken on rental basis by the defendant no.4. The defendant nos 1 to 4 were residing in the said room and accordingly they continued to reside in their own right. In the year 1982 plaintiff was in fact residing at Anantwadi and not in the suit room. As he lost possession of his room in Anantwadi the defendant nos.1 to 4 in fact allowed him to stay in the suit room. Thus, the defendants contended that the plaintiffs have in fact no legal right to stay in the suit room and there was no reason for the plaintiff to file the present suit because at no point of time the defendant had made an attempt to evict him as alleged by the plaintiff. Hence the defendants prayed for dismissal of the suit.

5. In view of the above mentioned pleadings the learned trial Judge framed issues. In order to prove the suit claim plaintiff Motilal Khandvi examined himself. As against this, on behalf of the defendants the defendant no.1 was examined. After considering the evidence adduced by both the parties the learned trial Judge came to the

conclusion that the plaintiff has failed to prove that the suit room was taken by him on rental basis and that the defendant nos.1 to 3 were permitted to stay there but they tried to evict the plaintiff. The learned trial Judge therefore dismissed the plaintiff's suit.

6. Being aggrieved by the said order the plaintiff has filed the present appeal. In this appeal before me, Shri Katikar, learned Advocate for the Appellant original plaintiff has urged only two points. Firstly, he submitted that the learned trial Judge has not properly appreciated the evidence on record as wrongly held that the plaintiff has failed to prove that he is tenant of the suit room. Secondly, he canvassed before me that the learned trial Judge ought to have noticed that defendants had not adduced any evidence to show that suit room was allotted to the defendant no.4 as a tenant. He, therefore, submitted that the appeal be allowed and the suit be decreed.

7. As against this, the learned Advocate for the Respondents supported the judgment and order passed by the learned trial Judge.

8. It is pertinent to note that both the parties are claiming tenancy rights in respect of the suit room. According to the plaintiff he has taken the suit room on rental basis from the rent collector in the year 1973 while it is contention of the defendants that defendant

no.4 has taken the said room on rental basis since 1973. From the deposition of the defendant no.1 it is very clear that he has in fact admitted that along with the defendant nos.1 to 3 plaintiff is also residing in the suit room. However, it is his specific case that the said room is actually taken on lease by the defendant no.4 and case of the plaintiff that he is exclusive tenant of the suit room is not correct. So, when the plaintiff is claiming injunction on the basis that he is exclusive tenant of the suit room and accordingly he is in possession, it is necessary to find out whether the plaintiff has adduced any evidence worth the named to show that the suit room he is a tenant on lease exclusively by him.

9. If we peruse the plaint and oral evidence of the parties, then it is very clear that plaintiff is not consistent in his stand. Initially, he has stated that he *is exclusive tenant of the suit room and it is only at the request of the defendant no.4 he has allowed the defendant nos 1 to 3 to reside in the suit room. However, if we see the suggestion put to defendant no.1 in his cross examination then we find that the plaintiff has in fact suggested to him that the suit room was let out to defendant nos. to 4 and plaintiff so this itself shows that even according to the plaintiff the defendants are also having tenancy rights in the suit room . When such is the position, the plaintiff is certainly not entitled to get permanent injunction as prayed.

10. The plaintiff has clearly admitted that he is not having even a single rent receipt to show that he has paid rent. On the contrary, he has stated that he made an attempt to pay the rent to the landlord or rent collector but then refused to accept the same. If really he had taken the suit room on rental basis then he would have sent the rent by MOs but that has also not happened. So, this conduct of the plaintiff shows that he was not a tenant. It is wroth to note that defendants has categorically stated that he has paid the rent to the landlord and landlord has issued the rent receipts to him. Not only that but he has also stated that he has produced the said rent receipts in the earlier suit. This statement of the defendant is also not challenged in the cross examination. So, this is another circumstances which lends support to defendants' version and negatives the case of the plaintiff.

11. It has also come on record that the Corporation had issued notice to the defendant no.4 to remove one wall of the suit room and as a result of the said notice defendant no.4 had filed a suit. In that suit plaintiff had submitted an application to implead him alleging that he is a tenant. However, admittedly the said application has been rejected. There is nothing on record to show that the plaintiff has preferred an appeal against the said order. So, this circumstance also supports the defendants' version.

12. Though the plaintiff alleged that the defendants are trying to evict him by force the plaintiff has failed to adduce any cogent evidence in that behalf. On the contrary, the defendant no.1 has made a statement on oath that the plaintiff is residing in the suit room along with them and they would not evict him without following due process of law. So, under such circumstances it is very clear that the plaintiff had failed to prove his case and the learned trial Judge rightly dismissed the plaintiff's suit.

13. In this view of the same there is no substance in this appeal. The appeal is dismissed.

(S.R.SATHE,J.)